

July 15, 2013

William D. McMinn
Deputy Port Attorney
3165 Pacific Highway
Post Office Box 120488
San Diego, California 92112-0458

Re: Your Request for Informal Assistance
Our File No. I-13-064a

Dear Mr. McMinn:

This letter responds to your request for informal assistance on behalf of Mark Stainbrook regarding the honorarium provisions of the Political Reform Act (the "Act").¹ Because your request does not specify all the facts necessary for a complete analysis of honoraria, we can only provide informal assistance.² Please note that the Fair Political Practices Commission does not act as a finder of fact when providing advice; this advice is based solely on the facts that you have provided. (In re Oglesby (1975) 1 FPFC Ops. 71.) Please note that our advice is based solely on the provisions of the Act. We offer no opinion on the application of any other bodies of law or any incompatible activities restrictions his agency may impose. Also, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

Under the facts presented below, do the Act's honorarium provisions prohibit Mark Stainbrook, Assistant Chief of the San Diego Harbor Police, from receiving payments for talks and lectures in connection with:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3).)

- (a) the Naval Post-Graduate School,
- (b) the Monterey Institute for International Studies,
- (c) books he has authored,
- (d) articles he has authored, or
- (e) his life experiences in the military and law enforcement, or on the subject of leadership, law enforcement, counter-terrorism or police-community relations?

CONCLUSION

Mr. Stainbrook is only prohibited from accepting any payment for giving talks and lectures that are not made in connection with the practice of a bona fide business, trade, or profession. Under the facts you have presented, it appears that the payments Mr. Stainbrook receives are in connection with a bona-fide business, provided, however, that the predominant activity of the business is not speechmaking, as explained below.

FACTS

Mr. Stainbrook became Assistant Chief of the San Diego Harbor Police in November 2011. He is also a Lieutenant Colonel in the United States Marine Corps Reserve, with over 26 years of military and law enforcement experience. The Assistant Chief position is a designated position in the Port of San Diego's conflict-of-interest code.

After the attacks of September 11, 2001, Mr. Stainbrook was deployed several times overseas and participated in the 2003 invasion of Iraq. After Baghdad was taken, he briefly commanded Iraqi police in the eastern section of Baghdad and, because he was an LAPD sergeant, was nicknamed the "Sheriff of Baghdad" by the media after appearing on CNN, ABC and other television networks and being quoted in numerous articles. His group was responsible for capturing Hekmet Alawazi who was Iraq's Minister of Finance and whose picture was on a card in the deck of the famous Iraqi playing cards. Mr. Stainbrook was a civil affairs officer and worked extensively with Muslim communities overseas.

After returning from Iraq, Mr. Stainbrook wrote a number of articles and columns for Police Magazine based on his experiences in law enforcement and the military. He also pursued a Master's Degree in Public Policy Administration from California State University, Long Beach. Because of his articles and media exposure, he was asked by numerous community groups to speak, which he did for free. Based on his master's thesis on post 9-11 Muslim communities and American law enforcement, he received a Fulbright Fellowship and lived in the UK for six months while being seconded to the West Yorkshire Police and working in the Pakistani-Muslim communities where the bombers of the July 7, 2005, London bombing attacks

had resided. After this assignment, he became a lieutenant in the Los Angeles Police Department's Counter-Terrorism and Special Operations Bureau for four years, continuing to work with Muslim communities and then in intelligence.

Mr. Stainbrook continued writing and published several articles in law enforcement magazines. He was also asked to speak for numerous groups and schools for free, but was also able to secure some paid jobs, usually for corporations. He typically speaks on leadership, law enforcement, counter-terrorism and police-community relations.

In 2008, Mr. Stainbrook developed a relationship with the Center for Defense and Homeland Security at the Naval Post-Graduate School at Monterey, California after speaking to one of their classes on Diaspora Communities and Terrorism. He typically speaks there twice a year. Since 2011 he has been paid a \$500 honorarium for each time he lectures. Last year he was asked by a retired Army general whom he had met in Africa to speak to his class at the Monterey Institute for International Studies, for which he was paid a \$5,500 honorarium. He receives a W-1099 for any paid speaking engagement.

Most recently, Mr. Stainbrook was published in two newly released books and hopes that these publications will generate future speaking engagements.

ANALYSIS

The Act prohibits designated employees of a state or local government agency from accepting an honorarium from any source. (Section 89502(c).) Included in the definition of "honorarium" is "any payment made for any speech given, article published³, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering." (Section 89501(a).) "Speech given" is defined as any public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. (Regulation 18931.1.)

"Honorarium" does not include, however: "Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession unless the sole or predominant activity of the business, trade, or profession is making speeches." (Section 89501(b); Regulation 18932).

It does not appear that Mr. Stainbrook's services as a speaker are provided in connection with the practice of any trade or profession. However, they may be provided in connection with a "bona fide business." Regulation 18932.1(a) provides:

"For purposes of Government Code Section 89501 through 89506, a business is presumed to be 'bona fide' if the owner of the business has maintained the following

³ Please note that payments received for writing an article may be honoraria. However, since you ask only about speaking engagements, we do not address this issue.

documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:

“(1) Books and records of accounting consistent with the operation of a business; and

“(2) Copies of tax returns filed in connection with the operation of the claimed business.”

Even if the presumption applies, a business is nevertheless not a “bona fide business” if its sole or predominant activity is speechmaking. Regulation 18932.3(a), which applies to a business that has been in existence for one or more years as is the case here, provides that speechmaking is presumed to be the “predominant activity” if, during the 12-month period prior to and including the date of a speech: (1) more than 50 percent of the *hours spent* on the individual’s business is devoted to the preparation and/or delivery of speeches; or (2) fifty percent of the *gross income* of the business is derived from the preparation and/or delivery of speeches. Absent information regarding the hours devoted to or the gross income derived from speechmaking by Mr. Stainbrook’s business, we are unable to determine whether the predominant activity of the business is speechmaking.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl